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DEC
CHARLES

No. 282

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES OF AMERICA, APPELLANT

v.

D. D. ADAMS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS

BRIEF FOR THE UNITED STATES

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Revised Statutes, sec. 5209, as amended by the act of September 26, 1918, ch. 177, 40 Stat. 967, 972 (U. S. C. Title 12, sec. 592) 2
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OPINION BELOW

The opinion of the District Court (R. 16) has not been reported.

JURISDICTION

The judgment to be reviewed was entered on June 4, 1929. (R. 15.) Petition for appeal was filed on July 1, 1929, and allowed the same day (R. 17), pursuant to the provisions of the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C. Title 18, Sec. 682). Statement of jurisdiction was filed in compliance with Rule

12 of this Court on August 24, 1929, and on October 28, 1929, this Court found that probable jurisdiction had been shown.

QUESTION PRESENTED

The sole question presented is whether an acquittal under an indictment charging false entries in specified books of a bank is a bar to a prosecution under an indictment charging a false entry made on a different occasion in a report of condition, it being alleged that the latter entry represents the aggregate of the false entries described in the first indictment.

STATUTE INVOLVED

Section 5209 R. S. as amended by the Act of September 26, 1918, c. 177, 40 Stat. 967, 972 (U. S. C. Title 12, Sec. 592), reads as follows, so far as pertinent:

> Any officer, director, agent, or employee of any Federal reserve bank, or of any member bank as defined in the Act of December twenty-third, nineteen hundred and thirteen, known as the Federal reserve Act, who * * * makes any false entry in any book, report, or statement of such Federal reserve bank or member bank, with intent in any case to injure or defraud such Federal reserve bank or member bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such Federal reserve bank or member

> bank, or the Comptroller of the Currency, or any agent or examiner appointed to examine the affairs of such Federal reserve bank or member bank, or the Federal Reserve Board; * * * shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States shall be fined not more than $5,000 or shall be imprisoned for not more than five years, or both, in the discretion of the court.

STATEMENT

Count two of the pending indictment, the only count here involved, charges, in substance, that defendant, an officer of the Union Bank & Trust Company of Batesville, Ark., a member bank of the Federal Reserve System, made a false entry in a report to the Federal Reserve Bank of St. Louis of condition of his bank at the close of business on December 31, 1926, purporting to show that the sum of $138,409.52 was due from outside banks, when in fact a much smaller sum was due. (R. 2.) He thereupon filed a " plea of former jeopardy and former acquittal " alleging that he had been previously tried and acquitted under counts III, V, VI, and VII of an indictment charging him with making on different days in the Journal, Ledger, and Daily Balance book of the bank false entries purporting to show on designated days remittances to outside banks, when no such remittances were made. (R. 4–7.) He alleged that all the entries were based upon the same transactions, and that each indictment charge would require the same

evidence. (R. 3, 6, 7.) No evidence was offered in support of the plea except the former indictment and the judgment of acquittal thereon. (R. 15.) The trial court sustained the plea on the ground that the only difference between the two indictment charges is that "entries were made of the same items in different books or reports." (R. 16.)

ARGUMENT

THE OFFENSE CHARGED IN COUNT II OF THE PENDING INDICTMENT IS NOT IDENTICAL WITH THE OFFENSES OF WHICH DEFENDANT WAS ACQUITTED

Unless the offenses, not the transactions, set forth in the counts of the indictment under which the appellee was acquitted, are identical with the offense described in Count II of the indictment the dismissal of which below is now before this Court for review, such judgment of dismissal must be reversed.

Taking up first the counts of the indictment under which appellee was acquitted, it appears that Count III charged the making of a false entry on August 23, 1926, in the Journal, Ledger, and Daily Balance Book, purporting to show that $10,000 had been remitted to a certain trust company. (R. 9–10.) Count V charged a false entry on October 5, 1926, in the same book, purporting to show that $27,125.25 had been remitted to a different bank. (R. 12.) Count VI charged a false entry on March 8, 1927, in the same book purporting to show that items aggregating $27,125.25 had been sent to a

certain bank for collection. (R. 13.) Count VII charged that on December 31, 1926, a false entry was made in the same book purporting to show that $10,000 had been remitted to a certain trust company. (R. 14–15.)

Count II of the pending indictment which is asserted to be a mere aggregate duplication of the offenses of which appellee was acquitted, charges that on January 10, 1927, defendant made a false entry in a report to the Federal Reserve Bank at St. Louis, Missouri, purporting to show that at the close of business on December 31, 1926, there was due from outside banks $138,409.52, when in truth a much smaller sum was due. (R. 2–3.)

It requires no argument to demonstrate that measured by the test stated by this Court in the cases set forth in the Government's brief in No. 281, *United States* v. *Adams,* filed simultaneously herewith, to which reference is made, the evidence *required* to establish the offenses described in the counts of the indictment under which defendant was acquitted, would by no means establish the offense described in Count II of the pending indictment. Under the pending indictment the question is the truth or falsity of the entry in the report showing that on December 31, 1926, certain banks owed defendant's bank a certain sum of money. Manifestly evidence tending to establish the falsity of entries in the bank's books on earlier different days showing remittances to outside banks, would not establish the falsity of the entry described in

the pending indictment covering the amount asserted to be due from outside banks on December 31, 1926, a date later than those of the alleged remittances mentioned in the counts under which an acquittal was had. It is plain that the offense described in the pending indictment is not the same offense of which defendant has been acquitted.

The allegation of the plea that the Government must rely on the same evidence in both cases is erroneous on its face and a mere conclusion of law of the pleader.

CONCLUSION

It is respectfully submitted that the judgment below should be reversed.

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